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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056168
Party	Plaintiff Legend Pictures LLC
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Submission	Motion to Compel Discovery
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Date	05/30/2013
Attachments	Petitioner's motion to compel Discovery responses.pdf(108433 bytes ) Exhibits to Petitioner's Motion To Compel A-C.pdf(4451917 bytes ) Exhibits to Petitioner's Motion To Compel D-E.pdf(4496118 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92056168
	)	
QUENTIN DAVIS	)	
	)	
Defendant	)	

**LEGEND PICTURES, LLC's MOTION TO COMPEL DEFENDANT'S ANSWERS TO  
PETITIONER'S FIRST AND SECOND SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION; TO SUSPEND FURTHER PROCEEDINGS  
PENDING DISPOSITION OF THE MOTION; AND TO EXTEND DISCOVERY  
SOLELY FOR PETITIONER'S BENEFIT**

Under 37 CFR 2.120(e)(1), TMBP 523.01, Petitioner, Legend Pictures, LLC, hereby moves the Trademark Trial and Appeal Board to compel Defendant's answers to Petitioner's First and Second Set of Interrogatories and Requests for Production as required by Fed. R. Civ. P. 33(b)(2) and 34(b)(2) and TMBP 403.03.

Petitioner, Legend Pictures, LLC, further moves the Trademark Trial and Appeal Board to suspend further proceedings in this case pending disposition of this motion in accordance with 37 CFR 2.120(e)(2), TMBP 523(2).

Petitioner Legend Pictures LLC further hereby moves the Trademark Trial and Appeal Board to extend discovery solely for Opposer's benefit in accordance with 37 CFR 2.120(a)(2), TMBP 403.04.

This motion is timely as it is made on the last date of discovery as suspended and before the opening of testimony periods. 37 CFR 2.120(e), TMBP 523.03.

Petitioner herewith submits a brief in support of its motions.

Respectfully submitted,

Legend Pictures, LLC

Dated: May 30, 2013

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92056168
	)	
QUENTIN DAVIS	)	
	)	
	)	
Defendant	)	

**BRIEF IN SUPPORT OF LEGEND PICTURES, LLC's MOTION TO COMPEL  
DEFENDANT'S ANSWERS TO PETITIONER'S FIRST AND SECOND SET OF  
INTERROGATORIES AND REQUESTS FOR PRODUCTION; TO SUSPEND  
FURTHER PROCEEDINGS PENDING DISPOSITION OF THE MOTION; AND TO  
EXTEND DISCOVERY SOLELY FOR PETITIONER'S BENEFIT**

Pursuant to Trademark Rule 2.120(d)(1) Petitioner submits this memorandum in support of its Motion For an Order to Compel. Petitioner respectfully seeks an order compelling Defendant (Defendant or Davis) to email the following documents and written responses to Petitioner within 30 days of the Board's order.<sup>1</sup>

(1) Answers to Petitioner's First and Second Set of Interrogatories;

(2) Answers without objection to Petitioner's First Set of Production Requests Nos., 2-5, 6(a), 7, 12-29, 31-39 and production of all documents sought therein; and

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<sup>1</sup> The parties have stipulated to service of all papers, including discovery requests, discovery answers and document production via email. Therefore, Petitioner respectfully requests that the Board order Defendant to answer the interrogatories and production requests and produce the documents via email, as stipulated by the parties.



(3) Answers to Petitioner's First Set of Production Request Nos. 1, 6(b), 8-11, 30 and 40-42, and the documents requested therein.

As cause for this motion, on March 14, 2013, Petitioner timely served 61 interrogatories on Defendant. Exhibit A. Davis has failed and refused to answer any of these interrogatories.

On March 14, 2013, Petitioner timely also served on Davis Petitioner's First Set of Production Requests. Exhibit B. Davis has failed and refused to answer any of Petitioner's document requests.

#### PETITIONER'S GOOD FAITH EFFORT TO RESOLVE THIS DISPUTE

Three times, Petitioner made a good a faith effort to resolve the issues presented by this motion, to no avail. Exhibits C-E.<sup>2</sup>

*In light of his alleged pro se status, before Davis' responses were due*, Petitioner initiated a teleconference with Davis to address any procedural concerns about Petitioner's First or Second Set of Interrogatories and Production Requests he may have had. This conference was held on April 10, 2013, three days before his responses were due. See, Exhibit C, summarizing Petitioner's April 10, 2013 teleconference.

On April 10, 2013, Davis expressed no questions whatsoever about the interrogatories and production requests, other than he lacked the address of one witness in order to respond substantively to Interrogatory No. 19. *Id.* We discussed the duty to cooperate, by which Davis

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<sup>2</sup> Exhibit E is Petitioner's Interrogatory Count, which was attached to Petitioner's Exhibit D, Petitioner's second letter attempting to resolve the dispute. Both were forwarded together to Mr. Davis, as shown by the email attachments to Exhibit D.

could pose individual objections and the parties would discuss those objections before motions were filed. *Id.*

He also agreed to exchange production documents electronically, by email. In the case of production documents too large for pdf, he and I expressly agreed on April 10, 2013 to production by cd-rom. *Id.*

Three days later, however, Davis served a General Objection to the First and Second Set of Interrogatories (and refused to answer any of Petitioner's Document Requests) See, TTAB Docket No. 9, Exhibit F. Davis also filed this at the Board in direct violation of the Board's rules. *Id.*

Petitioner sent two letters to Davis, on April 29, 2013 and May 2, 2013 to explain Davis' duties in discovery and pointing out relevant precedent. Exhibits C-E. Finally, Davis appeared to agree to produce some of the documents that were requested, before the close of discovery. Exhibit G, letter date May 3, 2013, p. 5.

Despite these exchanges, however, no documents were produced. Davis continued to refuse to answer any of Petitioner's interrogatories, failed to answer any of Petitioner's production requests. Further, Davis has failed to produce any documents before the close of discovery, despite his apparent concession that he was under a duty to do so. *Id.* Thus, Petitioner is forced to seek an order from the Board compelling Davis to provide the information and documents sought in Petitioner's discovery requests.

Petitioner also seeks an order extending the discovery period by sixty days, solely for Petitioner's benefit. As cause for this motion, Petitioner served its discovery early in the

discovery period, to allow sufficient time for follow-up discovery. Petitioner served its discovery requests on Defendant on March 14, 2013, two months and one week before the May 22, 2013 scheduled close of discovery.

By failing to answer discovery, Defendant not only denied Petitioner of its right to its initial discovery responses, but also its right to take follow up discovery. Petitioner is entitled to follow up discovery, including depositions to test the veracity of any statements made in the interrogatory answers and the authenticity of any documents produced.

As Defendant will be permitted 30 days to produce documents and answer interrogatories from the date of the Board's order, Petitioner will require a total of 30 days for discovery after receipt of Defendant's responses to analyze Defendant's discovery answers and documents and to take additional discovery, including depositions, if needed. Therefore, Petitioner respectfully requests that the Board issue an order extending the discovery period by sixty days solely for Petitioner's benefit.

## ARGUMENT

### I. INTRODUCTION

This cancellation proceeding involves Petitioner's claim that Davis, an individual who allegedly makes \$12,000 per year, has not used its alleged LEGENDARY mark and name on the wide variety of expensive entertainment services listed in his registration.

Petitioner, Legend Pictures LLC, has standing to bring this claim. Petitioner is one of the most prestigious and renowned entertainment companies in the United States. For many years, Petitioner and its predecessors have continuously used the LEGENDARY mark in the

United States for a wide variety of entertainment services and film production, including BATMAN BEGINS, 300, THE DARK KNIGHT, CLASH OF THE TITANS and THE HANGOVER, among others. Petitioner's LEGENDARY name and mark is the subject of several registrations, including an incontestable registration, pleaded in the Cancellation proceeding for:

Motion picture films, prerecorded videocassettes, digital versatile disks (DVDs), compact discs, and other recordable media, namely computer disks, CD-ROMs, audio discs, and audio tapes, featuring live action, computer generated, and animated motion pictures or combinations thereof; pre-recorded audio tapes, audio compact discs, and video tapes featuring musical entertainment in Class 9

Entertainment services, namely, production, development and distribution of motion picture films, television programs, television program specials, music video programs, documentary television programs and motion pictures, animated television programs and motion pictures in Class 41

Well after the issuance of Petitioner's registrations, Davis filed an application for and ultimately received a registration for the mark LEGENDARY for a wide variety of entertainment services. These are:

Entertainment in the nature of a live musical performances;  
Entertainment in the nature of live performances by a musical artist;  
Entertainment, namely, live music concerts; Live performances featuring

prerecorded vocal and instrumental performances viewed on a big screen; Record production; Music production; Audio recording and production; Videotape production; Motion picture song production; Production of video discs for others; Recording studios; Entertainment services, namely, production and distribution of musical audio and video programs; Production and distribution of musical audio and video recordings for broadcast; Music composition and transcription for others; Song writing services; Music publishing services; Entertainment, namely, personal appearances by a musician or entertainer; Entertainment services, namely, live, televised and movie appearances by a professional entertainer; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, and photographs; Entertainment services, namely, providing non-downloadable prerecorded music, and providing information, commentary and articles about music, all online via a global computer network; Entertainment in the nature of live traveling tour performances by a professional entertainer featuring music.

On May 26, 2011, Petitioner filed additional applications (Serial Nos. 85-331782 and 85-331756) to register the mark LEGENDARY & Design for:

Pre-recorded audio cassettes, audio books and compact discs featuring music and stories in the fields of fantasy, fiction, science fiction, horror, humor, adventure, and nonfiction in the fields of historical drama, biography, memoir, autobiography, and travelogue; Pre-recorded digital video discs, video cassettes

and digital versatile discs featuring TV shows and motion pictures in the fields of fantasy, fiction, science fiction, horror, humor, adventure, and nonfiction in the fields of historical drama, biography, memoir, autobiography, and travelogue in Class 9.

Entertainment services, namely, development of concepts for and production and distribution of motion pictures, television programs, Internet programs, videogames, multimedia entertainment content and live stage productions; publication of books, magazines and other printed matter in Class 41.

(Class 41 since deleted from 85-331782)

On September 23, 2011, an Examiner refused to register Petitioner's applications in light of Davis' prior registration for the following services:

Entertainment in the nature of a live musical performances;  
Entertainment in the nature of live performances by a musical artist;  
Entertainment, namely, live music concerts; Live performances featuring prerecorded vocal and instrumental performances viewed on a big screen;  
Record production; Music production; Audio recording and production;  
Videotape production; Motion picture song production; Production of video discs for others; Recording studios; Entertainment services, namely, production and distribution of musical audio and video programs; Production and distribution of musical audio and video recordings for broadcast; Music composition and transcription for others; Song writing services; Music

publishing services; Entertainment, namely, personal appearances by a musician or entertainer; Entertainment services, namely, live, televised and movie appearances by a professional entertainer; Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, and photographs; Entertainment services, namely, providing non-downloadable prerecorded music, and providing information, commentary and articles about music, all online via a global computer network; Entertainment in the nature of live traveling tour performances by a professional entertainer featuring music.

In discovery, Petitioner asked Defendant to provide *evidence* to back up its claimed use of the LEGENDARY mark on entertainment services. Specifically, Petitioner asked Defendant to provide a list of the services on which he actually uses his mark, to provide specific dates of first use for each of the services he will claim, to answer questions and provide documents proving continuous use of the mark LEGENDARY on each claimed service, or to confess any types or periods of non-use, and to produce information and documents proving any alleged sales and advertising figures. The information sought is fully relevant and material to Petitioner's rights.

Davis has willfully and in bad faith refused all attempts to obtain such information and documents.

## II. THE BOARD SHOULD OVERRULE DAVIS' OBJECTIONS AS UNSUPPORTED BY LAW AND INVALID

Davis contends that it may refuse to answer Petitioner's interrogatories on the ground that they exceed 75. This ground appears to have one basis. Davis contends that where an interrogatory requests information concerning "each product or service upon which Defendant may rely," or where an interrogatory requests information as to the first date Davis either "promoted, offered, or sold" a product, the interrogatory becomes multiplied by the number of product and services which the answering party might list in its answer. Exhibit F.

A. DAVIS' OBJECTION VIOLATES RULE 2.120(d)(1)

Davis argues that where an interrogatory requests information concerning "each product or service upon which Defendant may rely," or where an interrogatory requests information as to the first date Davis "promoted, offered, or sold" its products, this counts as multiple interrogatories.

Essentially, Davis argues that in determining the number of interrogatories that have been served, the TTAB should count the number of answers provided, and not the number of questions propounded. The Board should reject Davis's bizarre numbering system.

1. Trademark Rule 2.120 (d)(1) and TBMP 405.03(d) Mandate that the Board Reject Davis Numbering System.

In determining the number of interrogatories that have been served, the TTAB counts the number of *questions propounded*, not the number of answers provided.

At the time the Board was considering adopting Rule 2.120(d)(1), the Board expressly considered the impact multiple marks, multiple products and events would have on the rule's



implementation. Calcagno, *Tips From The TTAB, Discovery Practice Under Trademark Rule 2.120(d)(1)*, 80 TMR 285 (1990). If the Board adopted a rule requiring that a motion be filed each and every time a Defendant had pled more than one product, the Board would be inundated with discovery motions, rendering the rule ineffective as a tool to reduce discovery burdens. *Id.* Thus, the Board adopted a rule that interrogatories seeking a single piece of information as to multiple products or multiple marks, is considered as a single interrogatory. *Id.*

As TBMP 405.03(d) states:

**If an interrogatory requests “all relevant facts and circumstances” concerning a single issue, event, or matter; or asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party's involved marks, it will be counted as a single interrogatory.**

(Emphasis added.)

Fully aware of this rule, Davis nonetheless argues that this TBMP section applies only to situations where the propounding party asks for information about marks, not goods. In effect, Davis asks the Board to read out the phrase “for example” from the TBMP illustration. He seeks to convert that illustration into a holding that the rule cited applies to interrogatories about multiple marks only, and not multiple goods. Similarly, he seeks to convert the illustrations of “all relevant facts and circumstances” into a holding applying only to that phrase. This defies the plain meaning and logic of the TBMP section cited.

Petitioner's attorney pointed out the fallacy in Davis's logic and directed him to appropriate precedent. See, Exhibit C-E. Davis has willfully refused to review or follow any precedent that would require him to answer discovery.

## 2. Precedent Mandates that the Board Sustain Petitioner's Discovery

In numerous cases, the Board has consistently counted interrogatories requesting a particular piece of information as to "each of a party's products or services" or the first date a party has "offered promoted or sold" its products as a single interrogatory. In fact, Petitioner's interrogatories are a standard set similar to those served by numerous other counsel in similar proceedings.

In *Columbia Insurance Company v Delfyette*, Opposition No. 9117903, a combined three judge panel of the Board upheld Interrogatory Nos. 1-6. As here, these interrogatories requested a listing of "each product or service intended to be used in connection with an involved mark." See, Exhibit H. The Board counted this question as a single interrogatory.

Further, in *QMT Associated Inc. v Sara Neal Eskew*, Opposition No. 91165753, again citing *Calcagno, Tips from the TTAB, Discovery Practice Under Trademark Rule 2.120d0(1)*, the Board upheld QMT's Interrogatories, which included Interrogatory No.8. This interrogatory requested that Eskew: "(1) state all facts and (2) identify all documents upon which Eskew relies to deny each request for admission that [is] not categorically admitted." The Board overruled Eskew's objection which counted this question as multiple interrogatories. See, Exhibit I.

Moreover, in *South Cone v Swimwear Anywhere*, Opposition No. 9115911 and 91198725, the undersigned attorney on behalf of the propounding party, served a materially similar set of interrogatories – including the same language of which Davis complains --on the Opposer, South Cone. See, Exhibit J, Interrogatories 1-4. Overruling similar objections, the Board sustained the interrogatories. See Exhibit J. As the Board stated:

Applicant's interrogatories do not exceed seventy-five. Opposer's proposed counting methodology, calling for multiplication of certain interrogatories by the number of goods and services in the application or registration, and concluding that each good and service should be treated as a separate "issue" for purposes of counting subparts, is incorrect and inconsistent with the purpose and scope of discovery. Additionally, Opposer's arguments that the requirement to respond with the date of first use of each of its goods poses an "excessive burden"... is unpersuasive...

So too here.

Consistent with these cases, Petitioner respectfully invites the Board's attention to Petitioner's count of its interrogatories, at Exhibit E, and Petitioner respectfully submits that Davis' objection to Petitioner's First and Second Set of Interrogatories must be overruled. Whether an interrogatory counts as more than one question, depends on the discovering party's question, not the disclosing party's answer. A single question does not magically convert into multiple questions, depending on the disclosing party's answers.

III. DEFENDANT MUST ANSWER PETITIONER'S PRODUCTION REQUEST  
NOS. 2-5, 6(a), 7, 12-29, 31-39 WITHOUT OBJECTION

A. DEFENDANT has refused to produce documents in response to Document  
Requests Nos. 2-5, 6(a), 7, 12-29, 31-39.

As recited above, on March 14, 2013, Petitioner timely served Requests to Produce Nos.  
2-5, 6(a), 7, 12-29, 31-39 on Davis. These document requests are set forth in Petitioner's  
Exhibit B.

As the Board will note, as they did not depend on answers to any interrogatories, these  
requests to produce were completely independent of Davis' responses to the interrogatories.

Davis has failed and refused to answer these discovery requests or produce the requested  
documents for any reason whatsoever. These documents are needed to support Petitioner's  
claims.

Further, the Board should order Davis to answer these requests and produce the  
requested documents without objection. Davis interposed no response permitted to these  
production requests. The Trademark Rules of Practice and the Federal Rules of Civil Procedure  
permit only two forms of responses to document requests. A party may either answer each  
request or enter specific objections to each and every request. Fed. R. Civ. P. 34(b). An  
objection to interrogatories on the ground that they exceed 75 does not constitute an objection to  
unrelated requests for production.

Indeed, Davis appeared to have conceded as much in the last page of his May 3, 2013,  
letter attached as Exhibit G. ("I am willing to serve answers to these specific discovery requests

[those unconnected to specific interrogatories] ...”). Yet he still failed to produce the requested documents.

Whatever lack of diligence Davis displayed prior to initially refusing to produce these documents, Davis’s behavior after Petitioner’s April 29, 2013 and May 2, 2013 letters make clear he is not acting in good faith. Davis knows full well he is required to produce these documents and to answer these document requests. Therefore, Davis’ initial and continuing failure and refusal to respond to these document requests and produce the documents as required under the Trademark Rules of Practice or the Federal Rules of Civil Procedure was and is inexcusable.

Where, as here, a party has inexcusably failed to respond as provided for under the Trademark Rules of Practice or Federal Rules of Civil Procedure, the Board has consistently held that the party should be ordered to answer those requests without objection. See, *No Fear v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

The Board should not condone Davis’ actions. Davis is playing fast and loose with counsel for Petitioner and the Board. As the Board clearly will note from Davis’ Answer to the petition to cancel, he has legal assistance in this proceeding. No pro se without legal training or assistance could have drafted the Answer filed – or other papers served - in this case. Davis is willfully ignoring the TTAB rules, and pleading his pro se status to avoid those actions’ rightful consequences. Meanwhile, Petitioner is being prejudiced by Davis’ delays, which have increased the costs and length of this case, and frustrate Petitioner’s timely and legitimate efforts to obtain the truth from Davis during discovery.

#### IV. DEFENDANT MUST ANSWER PETITIONER’S PRODUCTION REQUEST

NOS 1, 6(b), 8-11, 30 and 40-42

When Davis refused to answer Petitioner’s Interrogatories on the ground that they exceeded 75 in number, Defendant also refused to answer or produce documents in response to any document requests referring to those interrogatories. See, Exhibit F. These are Request to Produce Nos. 1, 6(b), 8-11, 30 and 40-42. See, Exhibit B. This was the sole objection Davis proffered as to these requests.

As Davis’ objection to the interrogatories is invalid, the Board must order Davis to answer these productions requests and produce the requested documents.

#### V. DEFENDANT MUST PRODUCE A PRIVILEGED DOCUMENT LOG

As Defendant has not produced a single document, Davis has not produced a privileged document log. To avoid further disputes, the Board should instruct Defendant to produce a privileged document log with his documents, or to waive any objections based on the attorney client or work product privileges.

#### VI. THE BOARD SHOULD EXTEND OR REOPEN DISCOVERY

Defendant’s failure to respond appropriately to Petitioner’s discovery requests constitutes cause to extend or reopen discovery solely for Petitioner’s benefit.<sup>3</sup>

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<sup>3</sup> On May 22, 2013, the last scheduled day of discovery, Petitioner filed a “Motion to Compel Defendant’s Identification of Expert Witness and Production of Expert Report”. Pursuant to case law, see e.g., *Ortho Matrix vs. Wright Medical Technology, Inc.*, 2001 WL 754818 (TTAB July 3, 2001), the Board considers a case to have been suspended as of the date of filing of a Motion to Compel regardless of whether the scheduling order has issued. Defendant has now mooted that Motion, and Petitioner has requested the TTAB to lift the suspension to consider this motion and Petitioner’s Motion to Amend.

As stated by the Board in *Miss America Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067 (TTAB 1990):

“...the parties should note that the Board will, upon motion, reopen or extend discovery solely for the benefit of a party whose opponent, by wrongfully refusing to answer, or delaying its responses to, discovery, has unfairly deprived the propounding party of the right to take follow-up”.

For over twenty years, the Board has consistently followed this rule. See, e.g., *Neville Chemical Company v. The Lubrizol Corporation*, 184 U.S.P.Q. (BNA) 689, (TTAB 1975), where the TTAB extended the discovery period to allow follow-up discovery denied by the respondent’s failure to respond.

Indeed, because of the extreme prejudice to the propounding party, the Board, in precedential decisions, has followed this rule, even where a motion to compel was filed months after the close of discovery. For example, in *Pioneer Kabushiki Kaisha dba Pioneer Corporation v. Hitachi High Technologies America, Inc.*, 2005 TTAB LEXIS 182 (TTAB 2005), Judge Seeherman, granted the propounding’s motion to compel and *sua sponte* reopened discovery due to the prejudice to the propounding party.

Here, under established Board precedent, Defendant’s failure to respond constitutes cause for the extension or reopening of discovery solely for the benefit of Petitioner. 37 CFR 1.120(e)(2), TMBP 403.03. Petitioner timely served its discovery early in the discovery period with sufficient time to take follow up. By delaying his responses and responding

inappropriately, Defendant has deprived Petitioner of any discovery responses, and of the right to take follow up discovery.

## VII. CONCLUSION

Thus, for the foregoing reasons, Petitioner requests that the Board grant Petitioner's Motion for Leave to Compel, To Suspend and To Extend, since doing so is consistent with settled law, since the request is timely, since not doing so will prejudice the rights of Petitioner, and since justice so requires.

Respectfully submitted,

Legend Pictures, LLC

Dated: May 30, 2013

By\_\_ /*Carla C. Calcagno*/\_\_\_\_  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 30, 2013 a true and accurate copy of the foregoing

**LEGEND PICTURES, LLC's MOTION TO COMPEL DEFENDANT'S ANSWERS TO  
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SOLELY FOR PETITIONER'S BENEFIT AND BRIEF AND EXHIBITS A-J IN  
SUPPORT THEREOF**

was served by agreement of the parties on Defendant by emailing a copy of the same to  
[nevisbaby@hotmail.com](mailto:nevisbaby@hotmail.com) and [tharilest@yahoo.com](mailto:tharilest@yahoo.com).

/Carla Calcagno/

## EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC	)	
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Petitioner	)	
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v.	)	Cancellation No.: 92056168
	)	
QUENTIN DAVIS	)	
	)	
Defendant	)	

**LEGEND PICTURES, LLC's FIRST SET OF INTERROGATORIES 1-20**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Legend Pictures, LLC ("Legend Pictures") requests that Quentin Davis ("Davis") serve upon Legend Pictures sworn answers to the interrogatories set forth below at the offices of Calcagno Law, 2300 M Street, N.W., Suite 800, Washington, D.C. 20037, within thirty (30) days after the service hereof. These discovery requests are intended to be continuing in nature and any information or materials which may be discovered subsequent to the service and filing of the answers should be brought to the attention of Legend Pictures through supplemental answers within a reasonable time following such discovery.

For the convenience of the Board and the Parties, Legend Pictures requests that each discovery request (including subparts) be quoted in full immediately preceding the response.

## **DEFINITIONS AND INSTRUCTIONS**

a. The word "person" or "entity" shall mean and include without limitation, individuals, firms, associations, partnerships and corporations.

b. The term "Petitioner," "or "Legend Pictures", shall mean Legend Pictures, LLC its predecessors-in-interest, licensees and any affiliated or related companies or agents having any involvement with use by it or on its behalf of any mark or designation consisting of or including the term LEGENDARY and shall include, individually or collectively, its partners, officers, directors, employees, agents or representatives.

c. The term "Defendant," or "Davis", shall mean "Quentin Davis" his predecessors-in-interest, licensees and any affiliated or related companies or agents having any involvement with the use by him or on his behalf of any mark or designation consisting of or including the term LEGENDARY and shall include, individually or collectively, his partners, officers, directors, employees, agents or representatives.

d. In the following discovery requests, the term "document" or "documents" is used in its customary broad sense to mean all non-identical copies of all documents within the scope of Rule 34, Fed. R. Civ. P., including, without limitation, reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; opinions of counsel; communications of any nature including internal company communications; memoranda; notes; letters; e-mail; agreements; reports or summaries of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of documents and revisions of drafts of documents and any written, printed, typed or other graphic matter of any kind of nature; drawings; photographs; charts; electronically stored data; and all mechanical and electronic sound recordings or transcripts thereof, in the possession and/or control of Davis or his

employees or agents, or known to Davis to exist, and shall include all non-identical copies of documents by whatever means made and whether or not claimed to be privileged or otherwise excludable from discovery. By way of illustration only and not by way of limitation, any document bearing on any sheet or side thereof any marks, including, but not limited to, initials, stamped indicia, comment or notation of any character and not a part of the original text or any reproduction thereof, is to be considered a separate document, in the case of a machine readable document, identify the specifications and/or common name of the machine on which the document can be read such as "VHS videotape, MS DOS (IBM) PC using WordPerfect 5.1" or the like.

e. In the following discovery requests, where identifications of a document is required, such identification should describe the document sufficiently so that it can be specifically requested under Rule 34, Fed. R. Civ. P., and should include without limitation the following information, namely:

- I. the name and address of the author;
- ii. the date;
- iii. the general nature of the document, i.e., whether it is a letter, memorandum, pamphlet, report, advertising (including proofs), etc.;
- iv. the general subject matter of the documents;
- v. the name and address of all recipients of copies of the documents;
- vi. the name and address of the person now having possession of the original and the location of the original;
- vii. the name and address of each person now having possession of a copy and the location of each such copy;

viii. for each document DAVIS contends is privileged or otherwise excludable from discovery, the basis for such claim of privilege or other grounds for exclusion; and

ix. whether DAVIS is willing to produce such document voluntarily to Legend Pictures for inspection and copying.

f. In the following discovery requests, where identification of a person, as defined, is required, state:

I. the person's full name, state of incorporation, if any, present and/or last known home address (designating which), present and/or last known position or business affiliation (designating which), and/or present or last known affiliation with DAVIS (designating which), if any. In the case of a present or past employee, officer or director or agent of DAVIS, also state the person's period of employment or affiliation with DAVIS, and his or her present or last position during his affiliation with DAVIS. A post office box is not acceptable in responding to this instruction.

g. In the following discovery requests, where identification of an oral communication is required, state the date, the communicator, the recipient of the communication, and the nature of the communication.

h. All references in these discovery requests to the term or mark "LEGENDARY" shall mean all marks and designations consisting of or including the term LEGENDARY whether printed in all capital letters, all lower case letters, or a mixture of capital with lower case letters, in any size or style of font, and whether standing alone or in conjunction with other words, letters, numbers, symbols, or designs.

i. All references in these discovery requests to "the DAVIS LEGENDARY Mark" shall mean all marks and designations either used, applied for, or registered by or on behalf of

DAVIS, (see Definitions above) consisting of or including the term LEGENDARY whether printed in all capital letters, all lower case letters, or a mixture of capital with lower case letters, in any size or style of font, and whether standing alone or in conjunction with other words, letters, numbers, symbols, or designs, upon which DAVIS may rely in these proceedings. This definition specifically includes but is not limited to the mark depicted in Registration No. 4106459.

j. All references in these discovery requests to the "Legend Pictures' Marks" or the LEGEND PICTURES LEGENDARY Marks shall mean all marks and designations either used, applied for, or registered by or on behalf of Legend Pictures, LLC consisting of or including the term LEGENDARY, whether printed in all capital letters, all lower case letters, or a mixture of capital with lower case letters, in any size or style of font, and whether standing alone or in conjunction with other words, letters, numbers, symbols, or designs. This definition specifically includes but is not limited to each of the marks and registrations pled by Legend Pictures, LLC in these proceedings.

k. Whenever used herein, the term "&" shall be deemed to include the term "and" and the term "n"; the singular shall be deemed to include the plural, the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the functional words "each," "any," and "all" shall be deemed to include each of the other functional words.

1. The terms "state" or "describe" (as used with respect to specific interrogatories below) shall mean to set forth and/or identify with particularity all evidence or other information

available to DAVIS (see Definition a. above) concerning the matter, to identify each person with knowledge and to identify all communications and documents concerning the subject matter.

m. The term "Person" shall mean both natural, legal and juristic persons, and therefore shall include but not be limited to individuals, partnerships, corporations, limited liability companies, unincorporated organizations and associations.



## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

Identify, with the same degree of particularity as in its registration(s), each of the products or services now or ever applied for, registered, promoted, sold, rendered or performed by DAVIS (see Definitions and Instructions) in connection with any mark consisting of or including the term LEGENDARY (see Definitions and Instructions).

### **INTERROGATORY NO. 2**

For each and every product or service identified in response to Interrogatory No 1, state the following:

(a) the date DAVIS first either offered, sold or promoted the product or service in connection with the DAVIS LEGENDARY Mark (see Definitions and Instructions) in the United States; or if the product or service has not yet been offered, sold or distributed, the expected first use date of the DAVIS LEGENDARY Mark in connection with such goods or services;

(b) the earliest priority date DAVIS contends it is entitled to claim as to the United States for each product or service; and

(d) the circumstance (i.e., in the case of actual use, the mark used, or in the case of constructive use, the application filing, by country and serial number) giving rise to such alleged actual or constructive priority rights.

### **INTERROGATORY NO. 3**

Identify all outside firms that are now or have ever been employed by DAVIS in connection with the advertising or promotion of goods or services under the DAVIS

LEGENDARY Mark in the United States, and state the identity of those persons responsible for DAVIS's account with respect to the DAVIS LEGENDARY Mark. This specifically includes but is not limited to the agencies or firms now or ever employed by DAVIS in connection with the design, text, or content of each business card, webpage or other advertisement ever displayed by DAVIS for products or services advertised or offered under the DAVIS LEGENDARY Mark.

#### **INTERROGATORY NO. 4**

For each and every product or service identified in response to Interrogatory No. 1 now or ever sold by DAVIS under the DAVIS Mark in the United States, state the inclusive dates during which DAVIS has offered or sold such products or services under the DAVIS LEGENDARY Mark in the United States, and for any periods of non-use in the United States, explain the reasons for such non-use.

#### **INTERROGATORY NO. 5**

Identify all instances of actual confusion, mistake or deception known to DAVIS as to the source or origin, sponsorship or association as between its use or proposed use of any mark or designation consisting of or including the term LEGENDARY for any goods or services and the LEGEND PICTURES LEGENDARY Marks (see Definitions and Instructions).

#### **INTERROGATORY NO. 6**

Identify each person whom DAVIS expects to call as a witness at trial, state the subject matter on which the person is expected to testify, and state the substance of the facts and opinions to which the person is expected to testify and a summary of the grounds for each opinion.

### **INTERROGATORY NO. 7**

Identify each person (see Definitions and Instructions) DAVIS is aware of who now or ever has used, applied for, or registered any mark, company or trade name, or domain name (hereafter collectively “proprietary designations”) consisting of, or including, the term LEGENDARY for any goods or services in the United States, and state the nature of the goods or services on which each of these proprietary designations were used, applied for, or registered by each third party.

### **INTERROGATORY NO. 8**

For each product and service presently distributed, offered, sold or promoted or planned to be distributed, offered, sold or promoted under the LEGENDARY Mark by or on behalf of DAVIS in the United States, state the channels of trade through which DAVIS nor or has ever moved, or for products and services not presently in use, intends to move such products and/or services.

### **INTERROGATORY NO. 9**

State: (1) the name of the parties, (2) the Civil Action number, Opposition Number, Cancellation Number or other proceeding number; and (3) the jurisdiction, of all legal, administrative, or regulatory proceedings known to DAVIS, brought by or against DAVIS or any affiliated “person” (see Definitions and Instructions) involving any of the goods or services involved in these proceedings or which concern any mark or designation consisting of the term LEGENDARY, or which concern allegations of intellectual property infringement.

**INTERROGATORY NO. 10**

For each and every product and service now or ever sold or rendered under the DAVIS LEGENDARY Mark in the United States, state by the type of product or service (e.g. “live musical performances,” “music production,” “record distribution,” “music recordation,” “music composition,” “music transcription,” “songwriting,” “music publishing” or other entertainment services), DAVIS’s annual U.S. sales by unit and dollar amount for each year since DAVIS alleges his DAVIS LEGENDARY Mark was first used.

**INTERROGATORY NO. 11**

For each and every product and service identified in response to Interrogatory No. 1 state the following:

(a) the number of persons annually who retained Davis to either produce, distribute, record, publish, compose, transcribe, write songs, or perform any other entertainment services offered under the DAVIS LEGENDARY Mark, for each year since DAVIS alleges his DAVIS LEGENDARY Mark was first used;

(b) the inclusive dates and locations where such services were actually performed or rendered; and

**INTERROGATORY NO. 12**

For each and every product or service now or ever offered or promoted or distributed by DAVIS in the United States under the LEGENDARY Mark, state by the type of product or service (e.g. live musical performances,” “music production,” “record distribution,” “music recordation,” “music composition,” “music transcription,” “songwriting,” “music publishing” or other entertainment services), in U.S. dollars the amount DAVIS has expended annually

promoting each of those goods and services for each year since first use; stating the types of advertising or promotional media employed; the geographic regions of the United States in which each type of media was employed; and the amount expended each year for each type of media.

**INTERROGATORY NO. 13**

Describe in detail DAVIS's contention as to the ordinary purchasers or expected ordinary purchasers of the goods and/or services sold or to be sold under the parties' LEGENDARY Marks including without limitation, DAVIS's contention as to the level of care likely to be exercised by such ordinary purchasers in purchasing the goods and/or services sold under the Parties' Marks.

**INTERROGATORY NO. 14**

Identify (See Definitions and Instructions) all person(s) whom DAVIS contends is knowledgeable or upon whom DAVIS may rely as knowledgeable as to DAVIS's use in commerce, as that term is defined in Section 45 of the Lanham Act, of products or services under the DAVIS LEGENDARY Mark, from the first use to the present for each and every product and service upon which Davis contends the DAVIS LEGENDARY Mark now or has ever been used. This interrogatory specifically includes but is not limited to those knowledgeable as to DAVIS's alleged use of the term LEGENDARY in connection with each product and service listed in Registration No. 4106459.

**INTERROGATORY NO. 15**

State the inclusive dates during which DAVIS first and has continued to use the DAVIS LEGENDARY mark and identify all documents in DAVIS's possession evidencing such first and continuing use.

**INTERROGATORY NO. 16**

State with particularity all information in support of the denials in DAVIS's Response to Legend Pictures' Petition for Cancellation.

**INTERROGATORY NO. 17**

State with particularity all information in support of the affirmative defenses in DAVIS's Response to Legend Pictures' Petition for Cancellation.

**INTERROGATORY NO. 18**

Identify (See definitions and instructions) each person other than Petitioner or its agents and attorneys, or the USPTO with whom DAVIS has communicated about this proceeding, or with whom DAVIS consulted in drafting "Registrant's Response to Petition for Cancellation," and state in detail the substance of the facts and opinions communicated by each party to the communication.

**INTERROGATORY NO. 19**

For each witness named in DAVIS's initial disclosures other than Petitioner's attorneys, state in detail the substance of the facts and or opinions about which the witnesses named is expected to have discoverable information, and provide the regular employment or business

address (or other applicable daytime address) where the witness can be personally served. Please note that this interrogatory is not satisfied by a post office box address, as set forth in the present initial disclosures.

**INTERROGATORY NO. 20**

Identify those persons who had more than a clerical role in the answering of Legend Pictures' First or Second Set of Interrogatories or in any search for documents in connection with said interrogatories or Legend Pictures' Request for Production of Documents and beside the name of each such person, state the number of the interrogatory answer(s) with respect to which that person participated in or supplied information.

Respectfully submitted,

Date: March 14, 2013

By: /Carla C. Calcagno/  
Calcagno Law PLLC  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
Telephone: (202) 973-2880

Attorneys for Legend Pictures, LLC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC	)	
	)	
Petitioner	)	
	)	
	)	
v.	)	Cancellation No.: 92056168
	)	
QUENTIN DAVIS	)	
	)	
Defendant	)	

**LEGEND PICTURES, LLC's SECOND SET OF INTERROGATORIES  
No. 21**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Legend Pictures, LLC ("Legend Pictures") requests that Quentin Davis ("Davis") serve upon Legend Pictures sworn answers to the interrogatories set forth below at the offices of Calcagno Law, 2300 M Street, N.W., Suite 800, Washington, D.C. 20037, within thirty (30) days after the service hereof. These discovery requests are intended to be continuing in nature and any information or materials which may be discovered subsequent to the service and filing of the answers should be brought to the attention of Legend Pictures through supplemental answers within a reasonable time following such discovery.

For the convenience of the Board and the Parties, Legend Pictures requests that each discovery request (including subparts) be quoted in full immediately preceding the response.



## **DEFINITIONS AND INSTRUCTIONS**

For purposes of Legend Pictures' Second Set of Interrogatories, Legend Pictures hereby adopts and incorporates each of the Definitions and Instructions set forth in Legend Pictures' First Set of Interrogatories.

## **INTERROGATORIES**

### **INTERROGATORY NO. 21**

For each and every product and service identified in response to Interrogatory No. 1 set forth in Legend Pictures First Set of Interrogatories, identify (see Definitions and Instructions) five persons annually who retained DAVIS to perform or render each such services, or to whom Davis actually sold such products, for each year which DAVIS alleges he sold such products or rendered such services.

Respectfully submitted,

Date: March 14, 2013

By: /Carla C. Calcagno/  
Calcagno Law PLLC  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
Telephone: (202) 973-2880

Attorneys for Legend Pictures, LLC.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 14, 2013 a true and accurate copy of the foregoing LEGEND PICTURES' FIRST AND SECOND SET OF INTERROGATORIES AND FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS was served by agreement of the parties on Defendant by emailing a copy of the same to nevisbaby@hotmail.com and tharilest@yahoo.com. The undersigned hereby certifies that on March 14, 2013, a true and accurate copy of the foregoing documents were also served on the Defendant by mailing a copy through the United States Postal Service, first class mail, with sufficient postage, to the Defendant at the following address:

Quentin Davis  
PO Box 47893  
Tampa Florida  
33646

/Carla Calcagno/

## EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92056168
	)	
QUENTIN DAVIS	)	
	)	
Defendant	)	

**LEGEND PICTURES, LLC's FIRST REQUESTS FOR PRODUCTION OF  
DOCUMENTS 1-39**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Legend Pictures, LLC ("Legend Pictures") hereby requests that Quentin Davis ("Davis") produce for inspection and copying the following documents at the offices of counsel for Legend Pictures, Calcagno Law, 2300 M Street NW, Suite 800, Washington D.C. 20037, within thirty (30) days following the date of service of this request, or at such other time and place as the parties may mutually agree upon.

For purposes of Legend Pictures' First Requests for Production of Documents, Legend Pictures adopts the definitions and instructions set forth in Legend Pictures' First Set of Interrogatories to Davis.

If privilege is claimed as to any document Davis shall fully identify the document as to date, name, and capacity of the author(s), the name and capacity of all addressees, and the subject and general nature of the document (as for example "letter" or "opinion"). The ground for the claim of privilege shall also be given (such as attorney-client privilege, work-product privilege, etc.).

## **REQUESTS**

Legend Pictures requests production of the following:

1. All documents and things which reflect, refer to, relate to, or concern DAVIS's design, conception, selection, and adoption of the mark or designation the DAVIS LEGENDARY Mark (see Definitions and Instructions) in connection with each type of product or service identified in response to Interrogatory No. 1.
2. All documents and things which reflect, refer to, relate to, evidence or concern the consumer awareness of, consumer understanding of, or reaction to, or availability of any mark or designation consisting of the term "LEGENDARY" for DAVIS's products and/or services.
3. All documents and things which reflect, refer to, relate to, evidence or concern the domain name and trademark availability of any mark or designation consisting of the term "LEGENDARY", including but not limited to the mark shown in Registration No. 4016459.
4. All documents and things which reflect, refer to, relate to, evidence or concern any service mark use, trademark use, or use analogous to trademark/service mark use or other propriety use, occurring on or before 1999 of any mark or designation consisting of or including the term "LEGENDARY" by or for DAVIS in the United States.
5. Representative documents and things sufficient to evidence any service mark use, trademark use, or use analogous to trademark/service mark use, or other proprietary use, occurring each year after 1999, of any mark or designation consisting of or including the term "LEGENDARY" by or for DAVIS, in the United States.
6. All documents and things which reflect, refer to, relate to, evidence, or concern (a) any trademark availability searches or analyses conducted by or on behalf of DAVIS concerning any mark or designation consisting of or including the term "LEGENDARY" in the

United States; and (b) all documents and things which reflect, refer to, relate to, evidence or concern any information given in response to Legend Pictures' Interrogatory No 7.

7. Documents and things sufficient to evidence the advertising and/or promotional and/or marketing activity carried on by DAVIS in connection with each product or service on which or in connection with which any mark or designation consisting of or including the term "LEGENDARY" has been used in any fashion by or for DAVIS.

8. All documents and things which reflect, refer to, relate to or evidence the date any mark or designation consisting of or including the term "LEGENDARY" was first used by or on behalf of DAVIS for each type of product or service identified in response to Interrogatory No. 1.

9. Documents sufficient to support the information given in response to Legend Pictures' Interrogatory Nos. 10, 11, and 12.

10. All documents and things which reflect, refer to, relate to or evidence a discontinued or interrupted use of any mark or designation consisting of or including the term "LEGENDARY" by DAVIS, after his first use, for any of the products or services identified in response to Interrogatory No. 1.

11. All documents and things which reflect, refer to, relate to or evidence the information given in response to Legend Pictures' Interrogatory No. 5.

12. All documents and things tending to support or negate the contention that the LEGEND PICTURES LEGENDARY Marks do not so resemble the DAVIS LEGENDARY Mark as to be likely when used in connection with the parties' goods and services to cause confusion or to cause mistake or to deceive.

13. All documents and things which reflect, refer to, relate to, evidence, or concern any mail, telephone calls, checks, orders, inquiries, payments, complaints, deliveries or other communications or materials which were received by DAVIS but which were addressed to or which appeared to have been intended for Legend Pictures or which relate to Legend Pictures' products or services offered under the LEGENDARY PICTURES LEGENDARY Marks.

14. All documents and things in DAVIS's control, custody or possession which concern, reflect, refer to or relate to or mention Legend Pictures, the LEGEND PICTURES LEGENDARY Marks or Legend Pictures' products or services.

15. All documents and things which reflect, refer to, relate to or concern any state or federal trademark applications filed by DAVIS which would cover any mark consisting of or including the term "LEGENDARY."

16. All documents and things which reflect, refer to, relate to or concern the design and selection of the DAVIS LEGENDARY Mark, including but not limited to the creation, mark-up and selection of the mark shown in Registration No. 4016459, and the rejection of any alternative marks or names or designs.

17. All documents reflecting relating to or concerning any activity by an advertising agency or public relations firm or other person (or an individual or organization internal to DAVIS performing a similar function), including correspondence, relating to DAVIS's products and/or services to be offered or sold or proposed to be offered or sold in connection with any mark or designation consisting of or including the term "LEGENDARY."

18. Documents sufficient to show all channels of trade through which DAVIS's products or services offered under the DAVIS LEGENDARY Mark" (see Definitions and

Instructions) move or will move and the marketing channels used or intended to be used by DAVIS for such products or services.

19. Documents sufficient to show all classes or types of purchasers to whom DAVIS markets, or to whom DAVIS intends to market, his products or services and who purchase or will purchase any products or services offered by or on behalf of DAVIS under “the DAVIS LEGENDARY Mark.”

20. To the extent not produced in response to an earlier request, a representative example of each different advertisement or promotional material, presently distributed by or for DAVIS, or planned to be distributed by or for DAVIS, that mentions, identifies, or describes any products or services offered by DAVIS under “the DAVIS LEGENDARY Mark.”

21. To the extent not produced in response to an earlier request, a full copy of each different electronic advertisement, including but not limited to a complete copy of every web page, now or ever distributed by or for DAVIS, or planned to be distributed by or for DAVIS that mentions, identifies or describes any products or services offered by DAVIS under the DAVIS LEGENDARY Mark.

22. To the extent not produced in response to an earlier request, documents and things sufficient to show DAVIS’s use of the DAVIS LEGENDARY Mark in connection with each and every product and service offered by DAVIS for each year since the earliest date of first use that DAVIS will claim in these proceedings.

23. Documents sufficient to establish DAVIS’s sales, by dollar and unit volume, for each service rendered or product sold or offered for each year since DAVIS first used any mark or designation consisting of or including the DAVIS LEGENDARY Mark.



24. Documents sufficient to establish the names and business or home addresses and telephone numbers of not less than 5 persons per year for whom DAVIS has rendered each of the services described in its Registration or to whom DAVIS sold product under the DAVIS LEGENDARY MARK for each year since DAVIS first used any mark or designation consisting of or including the term the DAVIS LEGENDARY Mark; and all documents in DAVIS' possession supporting or evidencing such alleged sale or rendering of services under the DAVIS LEGENDARY Mark.

25. For each good or service now or ever promoted by or on behalf of DAVIS in the United States under the DAVIS LEGENDARY Mark, documents sufficient to show in U.S. dollars the amount DAVIS has expended annually promoting each of those goods and services for each year since first use; the types of advertising media employed; the geographic regions of the United States in which each type of media was employed; and the amount expended each year for each type of media.

26. A representative copy of each packaging, labeling, and advertising materials presently used or proposed to be used by DAVIS for all products and services under the DAVIS LEGENDARY Mark.

27. All documents and things which reflect, refer to, relate to or concern any licenses, agreements to license or consents to use, taken or given by DAVIS or negotiated by DAVIS (or any predecessors of DAVIS) relating to any product or service offered, distributed or sold by or on behalf of DAVIS under the DAVIS LEGENDARY Mark.

28. All documents and things which reflect, refer to, relate to or concern any assignments, agreements to assign, or consents to assign or to use taken or given by DAVIS (or

any predecessors of DAVIS) which relate in any way to any product or service offered by or on behalf of DAVIS under the DAVIS LEGENDARY Mark.

29. All documents, and things, including but not limited to reports or investigations, correspondence and settlement agreements, reflecting, referring to, evidencing or concerning, any third parties having used or registered or applied to register any mark or designation, consisting of, or including, the term LEGENDARY in the United States for any of the services described in Registration No. 4106459.

30. To the extent not otherwise produced, all documents mentioned or identified in response to Legend Pictures' First Set of Interrogatories to DAVIS.

31. All documents and things, referred to in DAVIS's Initial Disclosures and all documents and things reflecting, referring to, evidencing or concerning, any information referred to in DAVIS's Initial Disclosures

32. To the extent not produced in an earlier request, all documents and things in DAVIS's possession custody or control that DAVIS may use to show that a lack of likelihood of confusion exists.

33. To the extent not produced in response to an earlier request, all documents reflecting DAVIS's knowledge of Legend Pictures, and/or its marks, products or services prior to the filing of the cancellation proceeding.

34. All documents and things recording, relating to referring to or concerning inquiries, investigations, surveys, evaluations and/or studies conducted by DAVIS or by anyone acting for or on his behalf that refer or relate in any manner to the DAVIS LEGENDARY Mark or the LEGEND PICTURES LEGENDARY Marks, including documents and things reflecting

the date conducted, the name, address and title of each person who conducted it, the purpose for which it was conducted, and the findings or conclusions made.

35. To the extent not produced in response to an earlier request, a physical specimen of each and every label now or ever used by DAVIS to offer products, or render his services under any mark or designation consisting of the term LEGENDARY.

36. Documents sufficient to reflect all persons, and in the case of juristic persons, the persons most responsible for DAVIS' account, having any involvement with the design, maintenance, manufacture, production, marketing, distribution, advertisement, offering, rendering, performance or sale of any products or services by or on behalf of DAVIS under any mark or designation consisting of or including the term LEGENDARY.

37. To the extent not produced in response to an earlier request, all documents reflecting, relating to or referring to each and every retail store, Internet store, mobile application store, website, online or hard copy periodical or magazine, trade show, or other promotional device through which DAVIS's products or services under the DAVIS LEGENDARY Mark are now, are presently intended to be, or have ever been offered, distributed, promoted, or sold to consumers.

38. Documents sufficient to reflect the price at which DAVIS offers its products and services under the DAVIS LEGENDARY Mark to its customers and/or consumers.

39. All documents in support of DAVIS's affirmative defenses or which DAVIS may rely upon to support any first and continuing use of the DAVIS LEGENDARY Mark.

Dated: March 14, 2013

Respectfully submitted,

By: Carla C. Calcagno  
Calcagno Law, PLLC  
2300 M Street, N.W.  
Suite 800  
Washington, DC 20037  
Telephone: (202) 973-2880

Attorneys for LEGEND PICTURES, LLC

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 14, 2013 a true and accurate copy of the foregoing LEGEND PICTURES' FIRST AND SECOND SET OF INTERROGATORIES AND FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS was served by agreement of the parties on Defendant by emailing a copy of the same to nevisbaby@hotmail.com and tharilest@yahoo.com. The undersigned hereby certifies that on March 14, 2013, a true and accurate copy of the foregoing documents were also served on the Defendant by mailing a copy through the United States Postal Service, first class mail, with sufficient postage, to the Defendant at the following address:

Quentin Davis  
PO Box 47893  
Tampa Florida  
33646

/Carla Calcagno/

## EXHIBIT C

## Carla Calcagno

---

**From:** Carla Calcagno <carla.calcagno@calcagnolaw.com>  
**Sent:** Monday, April 29, 2013 3:51 PM  
**To:** nevisbaby@hotmail.com; tharilest@yahoo.com  
**Cc:** admin@calcagnolaw.com; janet.ricciuti@calcagnolaw.com  
**Subject:** Legend Pistures LLC v Davis  
**Attachments:** 20130429153457684.pdf; Response to Davis Motion to Quash.pdf

Dear Mr. Davis,

Please see attached.

Very Truly Yours

Carla Calcagno  
Calcagno Law  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
Tel: 202 973 2880  
Fax: 866 400 8464  
[carla.calcagno@calcagnolaw.com](mailto:carla.calcagno@calcagnolaw.com)

## CALCAGNO LAW PLLC

2300 M STREET, N.W., SUITE 800  
WASHINGTON, D.C. 20037  
TEL (202) 973-2880  
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CARLA.CALCAGNO@CALCAGNOLAW.COM

Quentin Davis  
Po Box 47893  
Tampa, Florida 33646  
United States  
[nevisbaby@hotmail.com](mailto:nevisbaby@hotmail.com); [tharilest@yahoo.com](mailto:tharilest@yahoo.com)

*RE: Legend Pictures LLC v Davis, Cancellation No. 92056168*

Dear Mr. Davis;

As you know, we act as outside trademark litigation counsel on behalf of Legend Pictures LLC ("Legend") in certain intellectual property matters.

Legend has received your spurious "Registrant's Objection to Petitioner's First and Second Set of Interrogatories."

Legend demands that you withdraw this baseless objection, and comply with your duty to answer discovery.

Moreover, as you have failed completely to answer or respond to Petitioner's Production Requests that are not tied to the interrogatories, specifically Nos. 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, Petitioner demands that you immediately produce the documents sought therein.

### BACKGROUND

Legend petitioned to cancel your LEGENDARY registration on, among other grounds, the grounds that you willfully and knowingly misrepresented your use and as a result, obtained a registration for the mark LEGENDARY for the following extremely broad list of services:

- Entertainment in the nature of a live musical performances;
- Entertainment in the nature of live performances by a musical artist; Entertainment, namely, live music concerts;
- Live performances featuring prerecorded vocal and instrumental performances viewed on a big screen;
- Record production;
- Music production;
- Audio recording and production;



Quentin Davis  
April 29, 2013

- Videotape production;
- Motion picture song production;
- Production of video discs for others;
- Recording studios;
- Entertainment services, namely, production and distribution of musical audio and video programs;
- Production and distribution of musical audio and video recordings for broadcast; Music composition and transcription for others;
- Song writing services;
- Music publishing services;
- Entertainment, namely, personal appearances by a musician or entertainer;
- Entertainment services, namely, live, televised and movie appearances by a professional entertainer;
- Entertainment services, namely, providing a web site featuring non-downloadable musical performances, musical videos, and photographs;
- Entertainment services, namely, providing non-downloadable prerecorded music, and providing information, commentary and articles about music, all online via a global computer network;
- Entertainment in the nature of live traveling tour performances by a professional entertainer featuring music

In your answer you denied the petition to cancel, and affirmatively defended on the grounds that the mark was in use on each of these services.

On March 14, 2013, Legend timely served on you its First and Second Set of Interrogatories and First Set of Production Requests. Among other things, these interrogatories and production requests asked you to provide information and documents supporting your assertions of use on this long list of services. By way of example, as to each product and service on which you now or ever have used the mark LEGENDARY, Legend asked for the inclusive dates of such alleged use, (Interrogatory Nos. 1-2 and 4); your sales figures (Interrogatory No. 10); and the identities of a few customers per year (Interrogatory Nos. 20).

Similarly, and by way of example, Legend asked only for *representative* documents and things sufficient to evidence use of the mark over the years (Production Request Nos. 4, 5, 22); your sales figures (Production Requests No. 23); the identities of your channels of trade and a few customers per year (Production Requests Nos. 18, 19, 24 and 37).

Each of these discovery topics is expressly permitted by TBMP Section 402.01, by which “(p)arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense,”

Quentin Davis  
April 29, 2013

We also initiated a teleconference with you to address any procedural concerns about Petitioner's First or Second Set of Interrogatories and Production Requests you may have had, in light of your alleged pro se status. This conference was held on April 10, 2013, three days before your responses were due.

On that date, you expressed no questions whatsoever about the interrogatories and production requests, other than you lacked the address of one witness we had requested. We discussed the duty to cooperate by which you would pose objections and the parties would discuss those objections before motions were filed.

You also agreed to exchange production documents electronically, by email. In the case of production documents too large for pdf, you and I expressly agreed on April 10, 2013 to production by cd-rom.

Three days later, however, you served a General Objection to the First and Second Set of Interrogatories and refused to answer any of Petitioner's Document Requests and also filed these at the Board in direct violation of the Board's rules.

I wish that during our April 10, 2013 call you had posed your objection to the interrogatories, in which case we could have discussed the Board's rules, and thereby avoided permitting you to delay providing the information and producing the documents Petitioner rightfully sought in these discovery requests.

#### DISCUSSION

Trademark Rule 2.120 (d)(1) provides that a party may serve up to 75 seventy five interrogatories in a proceeding. As stated in TBMP Section 405.03(d), with which you are familiar, "... if an interrogatory requests "all relevant facts and circumstances" concerning a single issue, event, or matter; or asks that a particular piece of information, such as, for example, annual sales figures under a mark, be given for multiple years, and/or for each of the responding party's involved marks, it will be counted as a single interrogatory.

Legend's discovery requests fully and completely comply with this rule. See, e.g. *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Pyttronic Industries, Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055, 2056 (TTAB 1990), citing *Carla Calcagno*, "TIPS FROM THE TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1)" 80 TMR 285 (1990).

Notably, while alleging that the interrogatories in question exceed the number permitted under the Board's rules, you have failed to provide any explanation at all for this assertion. We therefore demand that you answer these interrogatories within three days of this letter, or email

Quentin Davis  
April 29, 2013

me a document providing your *good faith* calculation of how these interrogatories fail to comply with the Board's rules. We remind you of your duty to cooperate in good faith in discovery.

Second, you have failed completely to comply with the Federal Rules requiring you to respond to Petitioner's Requests to Produce Nos. 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39 which are not tied to any interrogatory. While you objected to Petitioner's Interrogatories, nothing in the Board's rules on interrogatories even arguably permitted you to ignore these production requests.

As you have failed to answer or otherwise respond to these document requests within the period required, Legend is entitled that you answer these productions requests and produce the requested documents, without objection.

Legend hereby demands that you produce the documents requested by Requests to Produce Nos 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, without objection, by email or CD- Rom within three calendar days of this letter.

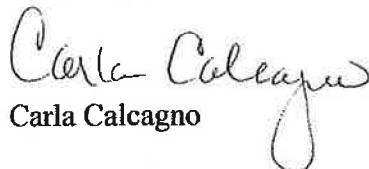
Again, Legend hereby demands that you immediately withdraw these baseless and evasive objections and comply with your duties under discovery. Unless you, *within three (3) calendar days of this letter*:

1. Answer the interrogatories, or provide by email a detailed and *good faith* explanation as to how the Legend Interrogatories fail to comply with Trademark Rule 2.120(d)(1); and
2. Answer without objection and Produce the documents sought in Requests to Produce Nos. 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39 by email or CD- Rom, and
3. Agree to a unilateral 30 day extension of the discovery period, including expert disclosures, solely for Legend's benefit due to the delay cause by your failure to properly respond to discovery,

Legend will vigorously pursue its remedies against you.

Please consider this our good faith effort to resolve this discovery dispute, failing which Legend will seek all and appropriate action from the Board.

Very truly yours,

  
Carla Calcagno

## EXHIBIT D

## Carla Calcagno

---

**From:** Carla Calcagno <carla.calcagno@calcagnolaw.com>  
**Sent:** Thursday, May 02, 2013 12:01 PM  
**To:** nevisbaby@hotmail.com; tharilest@yahoo.com  
**Subject:** Legend v Davis, Cancellation No. 92056168  
**Attachments:** Davis LTR 5.2.13.pdf; COUNT OF LEGEND PICTURES FIRST SET OF INTERROGATORIES TO DAVIS Nos 1-20. 3.pdf

Dear Mr. Davis,

Please see attached.

Regards,

Carla Calcagno

Calcagno Law  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
Tel: 202 973 2880  
Fax: 866 400 8464  
[carla.calcagno@calcagnolaw.com](mailto:carla.calcagno@calcagnolaw.com)

## CALCAGNO LAW PLLC

2300 M STREET, N.W., SUITE 800  
WASHINGTON, D.C. 20037  
TEL (202) 973-2880  
FAX (866) 400-8464

CARLA.CALCAGNO@CALCAGNOLAW.COM

May 2, 2013

Quentin Davis  
Po Box 47893  
Tampa, Florida 33646  
United States  
[nevisbaby@hotmail.com](mailto:nevisbaby@hotmail.com); [tharilest@yahoo.com](mailto:tharilest@yahoo.com)

*RE: Legend Pictures LLC v Davis, Cancellation No. 92056168*

Dear Mr. Davis;

We write in response to your May 1, 2013 communication refusing to comply with the requirements of Trademark Rule 2.120(d)(1), refusing to provide any written responses to timely and lawfully served production requests, and refusing to produce any documents sought therein.

While I appreciate your effort to understand the rules and regulations imposed by the TTAB, and educate us on your interpretation, I must re-iterate our position that the interrogatories served on you do not exceed the maximum of 75. Further, your current objection on the interrogatory number does not constitute an objection to the interrogatory definitions, as you aver.

Further, we must re-iterate that Production Requests Nos. 2-5, 6(a), 7, 12-29, 31-39 were not tied to any specific interrogatory response. Therefore, your current objection on the interrogatory number does not constitute an objection to the production requests, nor delay your obligation to have produced the requested documents. Thus, you must produce all documents sought by those production requests, immediately and without objection.

In this regard, unless the production request expressly sought all documents sought by a particular interrogatory, Legend Pictures' Interrogatories and the Request to Produce Documents are not tied together or inter-related to such a degree that any objection to one is an objection of the other. Interrogatories and Production Requests are two very distinct discovery tools and are treated by the courts and the TTAB as specific unto themselves regardless of whether there is a commonality of definitions and instructions, or whether they were served on the same date under the same certificate of service. Each of these discovery tools has its own rules on scope, timing, methods of response, etc. as dictated by Federal Rules of Civil Procedure 33 (Interrogatories) and 34 (Requests for Production of Documents).

Quentin Davis  
May 2, 2013

As an explanation of how the TTAB numbers/counts interrogatories, we attach a copy of the Interrogatories Nos. 1-21, as marked to show you how, under the rules of the TTAB, they number less than 75. As you will see, where you found 15 interrogatories between Interrogatories 1 and 2, these two interrogatories actually comprise 8 interrogatories under TTAB Rule 2.120(d)(1).

Your reference to the phrase "all relevant facts and circumstances" from TBMP 405.03(d) as dictating the sole situation when an interrogatory can be counted as a single interrogatory (i.e. only those interrogatories containing a phrase of this nature in relation to a particular piece of information), is simply incorrect. The term "facts and circumstances" can refer to a number of things including sales, advertisements, promotions, customers, etc., concerning a single issue. We refer you again to an article that you may read as to how to count interrogatories. See Carla Calcagno, TIPS FROM THE TTAB: "Discovery Practice under Trademark Rule 2.120(d)(1)", 80 TMR 285 (1990). As stated there:

**"...On the other hand, an interrogatory that requests, for example, information respecting sales figures over a certain period of years or which requests the date of first use for "each of the responding party's involved marks" is counted as one interrogatory. Similarly, one interrogatory may request "all relevant facts and circumstances" surrounding a particular event, such as a party's first use of its mark.**

With this letter and attachments, we have done more than is required to resolve this discovery dispute. We reached out to you before your discovery responses were due on April 10, 2013 at which time we invited you to discuss any problems, questions or issues that you had; we sent you a letter regarding same; and now we write again. The Board's rules on answering discovery are clear; your refusal to comply is both disappointing and unacceptable.

We urge you again to reconsider your objections and failure to respond to Opposer's First and Second Set of Interrogatories and Production Requests. And we will allow you one further day to do so. Unless by 5 pm eastern time on Friday, May 5, 2013, we receive your unqualified written assurances that by Monday May 8, 2013 you will email us :(1) complete answers to Petitioner's interrogatories; (2) complete answers to Petitioner's production requests, without objection where indicated above; (3) your production documents, (without objection, where

Quentin Davis  
May 2, 2013

indicated above); and (4) written assurances that you consent to a thirty day unilateral extension of the discovery period solely for Petitioner's benefit, we will be forced to file a Motion to Compel.

Very truly yours

/Carla Calcagno/



## EXHIBIT E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC

Petitioner

v.

QUENTIN DAVIS

Defendant

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Cancellation No.: 92056168

**LEGEND PICTURES, LLC's FIRST SET OF INTERROGATORIES 1-20**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Legend Pictures, LLC ("Legend Pictures") requests that Quentin Davis ("Davis") serve upon Legend Pictures sworn answers to the interrogatories set forth below at the offices of Calcagno Law, 2300 M Street, N.W., Suite 800, Washington, D.C. 20037, within thirty (30) days after the service hereof. These discovery requests are intended to be continuing in nature and any information or materials which may be discovered subsequent to the service and filing of the answers should be brought to the attention of Legend Pictures through supplemental answers within a reasonable time following such discovery.

For the convenience of the Board and the Parties, Legend Pictures requests that each discovery request (including subparts) be quoted in full immediately preceding the response.

## **DEFINITIONS AND INSTRUCTIONS**

a. The word "person" or "entity" shall mean and include without limitation, individuals, firms, associations, partnerships and corporations.

b. The term "Petitioner," "or "Legend Pictures", shall mean Legend Pictures, LLC its predecessors-in-interest, licensees and any affiliated or related companies or agents having any involvement with use by it or on its behalf of any mark or designation consisting of or including the term LEGENDARY and shall include, individually or collectively, its partners, officers, directors, employees, agents or representatives.

c. The term "Defendant," or "Davis", shall mean "Quentin Davis" his predecessors-in-interest, licensees and any affiliated or related companies or agents having any involvement with the use by him or on his behalf of any mark or designation consisting of or including the term LEGENDARY and shall include, individually or collectively, his partners, officers, directors, employees, agents or representatives.

d. In the following discovery requests, the term "document" or "documents" is used in its customary broad sense to mean all non-identical copies of all documents within the scope of Rule 34, Fed. R. Civ. P., including, without limitation, reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; opinions of counsel; communications of any nature including internal company communications; memoranda; notes; letters; e-mail; agreements; reports or summaries of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of documents and revisions of drafts of documents and any written, printed, typed or other graphic matter of any kind of nature; drawings; photographs; charts; electronically stored data; and all mechanical and electronic sound recordings or transcripts thereof, in the possession and/or control of Davis or his

employees or agents, or known to Davis to exist, and shall include all non-identical copies of documents by whatever means made and whether or not claimed to be privileged or otherwise excludable from discovery. By way of illustration only and not by way of limitation, any document bearing on any sheet or side thereof any marks, including, but not limited to, initials, stamped indicia, comment or notation of any character and not a part of the original text or any reproduction thereof, is to be considered a separate document, in the case of a machine readable document, identify the specifications and/or common name of the machine on which the document can be read such as "VHS videotape, MS DOS (IBM) PC using WordPerfect 5.1" or the like.

e. In the following discovery requests, where identifications of a document is required, such identification should describe the document sufficiently so that it can be specifically requested under Rule 34, Fed. R. Civ. P., and should include without limitation the following information, namely:

- I. the name and address of the author;
- ii. the date;
- iii. the general nature of the document, i.e., whether it is a letter, memorandum, pamphlet, report, advertising (including proofs), etc.;
- iv. the general subject matter of the documents;
- v. the name and address of all recipients of copies of the documents;
- vi. the name and address of the person now having possession of the original and the location of the original;
- vii. the name and address of each person now having possession of a copy and the location of each such copy;

viii. for each document DAVIS contends is privileged or otherwise excludable from discovery, the basis for such claim of privilege or other grounds for exclusion; and

ix. whether DAVIS is willing to produce such document voluntarily to Legend Pictures for inspection and copying.

f. In the following discovery requests, where identification of a person, as defined, is required, state:

I. the person's full name, state of incorporation, if any, present and/or last known home address (designating which), present and/or last known position or business affiliation (designating which), and/or present or last known affiliation with DAVIS (designating which), if any. In the case of a present or past employee, officer or director or agent of DAVIS, also state the person's period of employment or affiliation with DAVIS, and his or her present or last position during his affiliation with DAVIS. A post office box is not acceptable in responding to this instruction.

g. In the following discovery requests, where identification of an oral communication is required, state the date, the communicator, the recipient of the communication, and the nature of the communication.

h. All references in these discovery requests to the term or mark "LEGENDARY" shall mean all marks and designations consisting of or including the term LEGENDARY whether printed in all capital letters, all lower case letters, or a mixture of capital with lower case letters, in any size or style of font, and whether standing alone or in conjunction with other words, letters, numbers, symbols, or designs.

i. All references in these discovery requests to "the DAVIS LEGENDARY Mark" shall mean all marks and designations either used, applied for, or registered by or on behalf of

DAVIS, (see Definitions above) consisting of or including the term LEGENDARY whether printed in all capital letters, all lower case letters, or a mixture of capital with lower case letters, in any size or style of font, and whether standing alone or in conjunction with other words, letters, numbers, symbols, or designs, upon which DAVIS may rely in these proceedings. This definition specifically includes but is not limited to the mark depicted in Registration No. 4106459.

j. All references in these discovery requests to the "Legend Pictures' Marks" or the LEGEND PICTURES LEGENDARY Marks shall mean all marks and designations either used, applied for, or registered by or on behalf of Legend Pictures, LLC consisting of or including the term LEGENDARY, whether printed in all capital letters, all lower case letters, or a mixture of capital with lower case letters, in any size or style of font, and whether standing alone or in conjunction with other words, letters, numbers, symbols, or designs. This definition specifically includes but is not limited to each of the marks and registrations pled by Legend Pictures, LLC in these proceedings.

k. Whenever used herein, the term "&" shall be deemed to include the term "and" and the term "n"; the singular shall be deemed to include the plural, the plural shall be deemed to include the singular; the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the functional words "each," "any," and "all" shall be deemed to include each of the other functional words.

l. The terms "state" or "describe" (as used with respect to specific interrogatories below) shall mean to set forth and/or identify with particularity all evidence or other information

available to DAVIS (see Definition a. above) concerning the matter, to identify each person with knowledge and to identify all communications and documents concerning the subject matter.

m. The term "Person" shall mean both natural, legal and juristic persons, and therefore shall include but not be limited to individuals, partnerships, corporations, limited liability companies, unincorporated organizations and associations.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

Identify, with the same degree of particularity as in its registration(s), each of the products or services now or ever applied for, registered, promoted, sold, rendered or performed by DAVIS (see Definitions and Instructions) in connection with any mark consisting of or including the term LEGENDARY (see Definitions and Instructions). (1)

### **INTERROGATORY NO. 2**

For each and every product or service identified in response to Interrogatory No 1, state the following:

(a) the date DAVIS first either offered, sold or promoted the product or service in connection with the DAVIS LEGENDARY Mark (see Definitions and Instructions) in the United States; or if the product or service has not yet been offered, sold or distributed, the expected first use date of the DAVIS LEGENDARY Mark in connection with such goods or services; (2)

(b) the earliest priority date DAVIS contends it is entitled to claim as to the United States for each product or service; and (1)

(d) the circumstance (i.e., in the case of actual use, the mark used, or in the case of constructive use, the application filing, by country and serial number) giving rise to such alleged actual or constructive priority rights. (4)

### **INTERROGATORY NO. 3**

Identify all outside firms that are now or have ever been employed by DAVIS in connection with the advertising or promotion of goods or services under the DAVIS LEGENDARY Mark in the United States, and state the identity of those persons responsible for



DAVIS's account with respect to the DAVIS LEGENDARY Mark. This specifically includes but is not limited to the agencies or firms now or ever employed by DAVIS in connection with the design, text, or content of each business card, webpage or other advertisement ever displayed by DAVIS for products or services advertised or offered under the DAVIS LEGENDARY Mark.

(2)

**INTERROGATORY NO. 4**

For each and every product or service identified in response to Interrogatory No. 1 now or ever sold by DAVIS under the DAVIS Mark in the United States, state the inclusive dates during which DAVIS has offered or sold such products or services under the DAVIS LEGENDARY Mark in the United States, and for any periods of non-use in the United States, explain the reasons for such non-use.

(2)

**INTERROGATORY NO. 5**

Identify all instances of actual confusion, mistake or deception known to DAVIS as to the source or origin, sponsorship or association as between its use or proposed use of any mark or designation consisting of or including the term LEGENDARY for any goods or services and the LEGEND PICTURES LEGENDARY Marks (see Definitions and Instructions).

(1)

**INTERROGATORY NO. 6**

Identify each person whom DAVIS expects to call as a witness at trial, state the subject matter on which the person is expected to testify, and state the substance of the facts and opinions to which the person is expected to testify and a summary of the grounds for each opinion.

(4)

**INTERROGATORY NO. 7**

Identify each person (see Definitions and Instructions) DAVIS is aware of who now or ever has used, applied for, or registered any mark, company or trade name, or domain name (hereafter collectively “proprietary designations”) consisting of, or including, the term LEGENDARY for any goods or services in the United States, and state the nature of the goods or services on which each of these proprietary designations were used, applied for, or registered by each third party. (2)

**INTERROGATORY NO. 8**

For each product and service presently distributed, offered, sold or promoted or planned to be distributed, offered, sold or promoted under the LEGENDARY Mark by or on behalf of DAVIS in the United States, state the channels of trade through which DAVIS nor or has ever moved, or for products and services not presently in use, intends to move such products and/or services. (2)

**INTERROGATORY NO. 9**

State: (1) the name of the parties, (2) the Civil Action number, Opposition Number, Cancellation Number or other proceeding number; and (3) the jurisdiction, of all legal, administrative, or regulatory proceedings known to DAVIS, brought by or against DAVIS or any affiliated “person” (see Definitions and Instructions) involving any of the goods or services involved in these proceedings or which concern any mark or designation consisting of the term LEGENDARY, or which concern allegations of intellectual property infringement. (3)

**INTERROGATORY NO. 10**

For each and every product and service now or ever sold or rendered under the DAVIS LEGENDARY Mark in the United States, state by the type of product or service (e.g. “live musical performances,” “music production,” “record distribution,” “music recordation,” “music composition,” “music transcription,” “songwriting,” “music publishing” or other entertainment services), DAVIS’s annual U.S. sales by unit and dollar amount for each year since DAVIS alleges his DAVIS LEGENDARY Mark was first used. (3)

**INTERROGATORY NO. 11**

For each and every product and service identified in response to Interrogatory No. 1 state the following:

(a) the number of persons annually who retained Davis to either produce, distribute, record, publish, compose, transcribe, write songs, or perform any other entertainment services offered under the DAVIS LEGENDARY Mark, for each year since DAVIS alleges his DAVIS LEGENDARY Mark was first used;

(b) the inclusive dates and locations where such services were actually performed or rendered; (5)

**INTERROGATORY NO. 12**

For each and every product or service now or ever offered or promoted or distributed by DAVIS in the United States under the LEGENDARY Mark, state by the type of product or service (e.g. live musical performances,” “music production,” “record distribution,” “music recordation,” “music composition,” “music transcription,” “songwriting,” “music publishing” or other entertainment services), in U.S. dollars the amount DAVIS has expended annually

promoting each of those goods and services for each year since first use; stating the types of advertising or promotional media employed; the geographic regions of the United States in which each type of media was employed; and the amount expended each year for each type of media. (6)

**INTERROGATORY NO. 13**

Describe in detail DAVIS's contention as to the ordinary purchasers or expected ordinary purchasers of the goods and/or services sold or to be sold under the parties' LEGENDARY Marks including without limitation, DAVIS's contention as to the level of care likely to be exercised by such ordinary purchasers in purchasing the goods and/or services sold under the Parties' Marks. (2)

**INTERROGATORY NO. 14**

Identify (See Definitions and Instructions) all person(s) whom DAVIS contends is knowledgeable or upon whom DAVIS may rely as knowledgeable as to DAVIS's use in commerce, as that term is defined in Section 45 of the Lanham Act, of products or services under the DAVIS LEGENDARY Mark, from the first use to the present for each and every product and service upon which Davis contends the DAVIS LEGENDARY Mark now or has ever been used. This interrogatory specifically includes but is not limited to those knowledgeable as to DAVIS's alleged use of the term LEGENDARY in connection with each product and service listed in Registration No. 4106459. (1)

**INTERROGATORY NO. 15**

State the inclusive dates during which DAVIS first and has continued to use the DAVIS LEGENDARY mark and identify all documents in DAVIS's possession evidencing such first and continuing use. (3)

**INTERROGATORY NO. 16**

State with particularity all information in support of the denials in DAVIS's Response to Legend Pictures' Petition for Cancellation. (1)

**INTERROGATORY NO. 17**

State with particularity all information in support of the affirmative defenses in DAVIS's Response to Legend Pictures' Petition for Cancellation. (1)

**INTERROGATORY NO. 18**

Identify (See definitions and instructions) each person other than Petitioner or its agents and attorneys, or the USPTO with whom DAVIS has communicated about this proceeding, or with whom DAVIS consulted in drafting "Registrant's Response to Petition for Cancellation," and state in detail the substance of the facts and opinions communicated by each party to the communication. (3)

**INTERROGATORY NO. 19**

For each witness named in DAVIS's initial disclosures other than Petitioner's attorneys, state in detail the substance of the facts and or opinions about which the witnesses named is expected to have discoverable information, and provide the regular employment or business

address (or other applicable daytime address) where the witness can be personally served. Please note that this interrogatory is not satisfied by a post office box address, as set forth in the present initial disclosures. (3)

**INTERROGATORY NO. 20**

Identify those persons who had more than a clerical role in the answering of Legend Pictures' First or Second Set of Interrogatories or in any search for documents in connection with said interrogatories or Legend Pictures' Request for Production of Documents and beside the name of each such person, state the number of the interrogatory answer(s) with respect to which that person participated in or supplied information. (2)

Respectfully submitted,      Total: 54

Date: March 14, 2013

By: /Carla C. Calcagno/  
Calcagno Law PLLC  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
Telephone: (202) 973-2880

Attorneys for Legend Pictures, LLC.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC	)	
	)	
Petitioner	)	
	)	
	)	
v.	)	Cancellation No.: 92056168
	)	
QUENTIN DAVIS	)	
	)	
Defendant	)	

**LEGEND PICTURES, LLC's SECOND SET OF INTERROGATORIES  
No. 21**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Legend Pictures, LLC ("Legend Pictures") requests that Quentin Davis ("Davis") serve upon Legend Pictures sworn answers to the interrogatories set forth below at the offices of Calcagno Law, 2300 M Street, N.W., Suite 800, Washington, D.C. 20037, within thirty (30) days after the service hereof. These discovery requests are intended to be continuing in nature and any information or materials which may be discovered subsequent to the service and filing of the answers should be brought to the attention of Legend Pictures through supplemental answers within a reasonable time following such discovery.

For the convenience of the Board and the Parties, Legend Pictures requests that each discovery request (including subparts) be quoted in full immediately preceding the response.

## **DEFINITIONS AND INSTRUCTIONS**

For purposes of Legend Pictures' Second Set of Interrogatories, Legend Pictures hereby adopts and incorporates each of the Definitions and Instructions set forth in Legend Pictures' First Set of Interrogatories.

## **INTERROGATORIES**

### **INTERROGATORY NO. 21**

For each and every product and service identified in response to Interrogatory No. 1 set forth in Legend Pictures First Set of Interrogatories, identify (see Definitions and Instructions) five persons annually who retained DAVIS to perform or render each such services, or to whom Davis actually sold such products, for each year which DAVIS alleges he sold such products or rendered such services. (7)

Respectfully submitted,

Date: March 14, 2013

By: /Carla C. Calcagno/  
Calcagno Law PLLC  
2300 M Street, N.W.  
Suite 800  
Washington, D.C. 20037  
Telephone: (202) 973-2880

Attorneys for Legend Pictures, LLC.